

CONNECTICUT CONSTRUCTION INDUSTRIES ASSOCIATION, INC.



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**Raised Bill No. 6299, An Act Concerning Fraud Against the State
Committee on Government, Administration and Elections
February 2, 2009**

CCIA Position: OPPOSED

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in Connecticut and is committed to working to advance and promote a better quality of life for all citizens in the state. CCIA is comprised of nine divisions, including contractors, subcontractors, suppliers and affiliated organizations representing all aspects of the construction industry. CCIA has been actively engaged in state contracting reform and supports efforts to reform state contracting. CCIA seeks to ensure that the integrity of the contracting reform effort is preserved.

CCIA is opposed to Raised Bill 6299, An Act Concerning Fraud Against the State, and respectfully requests that the Committee on Government, Administration and Elections not act on the bill. Raised Bill 6299 is a state false claims act, which most would agree is an imperfect statute. This law, aimed at a small number of corrupt public officials and unscrupulous contractors or grant recipients, places every innocent organization and all of the hard-working people involved in state funded endeavors in jeopardy.

If enacted, Raised Bill 6299 will impose the specter of treble damages and high penalties on transactions in the government marketplace, and will virtually guarantee a dramatic increase in lawsuits asserted against innocent persons, *even if* a false claim is not committed.

This bill dangerously lowers the standards of intent and burden of proof that are currently required to prove fraud. This exposes every person and organization that works under a state-funded contract or seeks state reimbursement under a state-funded grant to abusive lawsuits comprised of aggressively asserted positions under a growing number of legal theories that stretch the boundaries of the Act.

The bill does not offer enough protection to contractors defending abusive actions, putting honest and reputable contractors—as well as jobs—at risk. Lawful defendants are often forced to spend a great deal of money and waste resources before settling lawsuits to avoid the nuisance of litigation, even though the contractor knows it has done nothing wrong.

Moreover, under Connecticut's contracting reform legislation, the collateral consequences are of grave concern. The mere allegation of "false claims" can tarnish a contractor's reputation and cause the contractor to lose its prequalification status - eliminating it from performing public work - even if there is no false claim committed. Abuse of this law could lead to state agencies disqualifying, suspending, or debarring innocent contractors, or deeming innocent contractors to be non-responsible bidders merely upon the filing of allegations. This immediately puts contractors out of business and hard-working people out of jobs.

Building a Better Connecticut



Significant provisions in Raised Bill 6299 that are of grave concern to the construction industry include:

- The definition of “claim” is so broad that almost any action by a contractor could be a claim. Some interpret a claim to be a single document; others interpret it to be separate phrases or items within a single document. A claim need not be in writing at all. Likewise, there is no distinction where negotiations over a difference of opinion end and a claim begins. (Section 1 (2))
- The definition of “knowing” and “knowingly” is expanded by two broad provisions that have no boundaries. Acting in deliberate ignorance or reckless disregard of the truth or falsity leaves the provision open to interpretation. (Section 1 (1))
- The term “false” is not defined. In many cases falsity is not clear. For example, questions of scientific or engineering judgment are neither strictly true nor strictly false. Questions of interpretation of specifications, drawings or other technical requirements may be matters of opinion on which reasonable minds may disagree without making a “false” statement. Here, any contractor that shares his true thinking with the government can be liable for a false claim.
- This FCA does not require a showing of specific intent to defraud. The standard for this “scienter” requirement for civil liability is much easier to meet than for common law fraud. Here, a corporation may be held liable under the civil FCA for acts of its employees and subcontractors as long as they acted within the scope of authority, even if no management personnel knew about the false claims. (Section 1(1)(C)).
- This FCA does not require a showing of materiality. Materiality means that the claim’s falsity must have had a natural tendency to influence the government’s decision to pay. Without it, the Act allows misconstruing trivial violations of the letter of the contract documents as false claims.
- The “preponderance of the evidence” standard of proof is lower than the “clear and convincing evidence” standard of proof that applies to actions in fraud. The low standard of proof combines with the broad elements of a claim to make actions relatively easy to allege and prove, especially considering the gray area of construction judgment. The low standard of proof encourages abuse, because it compounds the problems with the broad definitions. (Section 13)
- The high penalties and damages often far exceed any harm to the government. Penalties of \$5,000 to \$10,000 per claim, three times the government’s damages, all costs of investigation and prosecution, and suspension and debarment combine with the easy legal standards to create a tremendous threat. (Section 2 (b))
- The attorney fees and costs provisions are unbalanced. A successful plaintiff automatically collects reasonable attorney fees and costs; on the other hand, a successful defendant only has a remedy against the plaintiff for abuse of a false claims act in rare and unusual circumstances. Even then, it is only permissive by the court. (Section 2(b) and Section 6 (c))
- Under the contracting reform measures instituted over the past five years, any contractor can lose its prequalification status, be suspended or debarred from state contracting, or found to be a non-responsible bidder upon the filing of allegations, even if no false claim was committed.

If you have any questions or would like additional information, please contact Don Shubert or Matthew Hallisey at (860) 529-6855.